

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING	)	
PHARMACY, INC. PRODUCTS LIABILITY	)	MDL No. 02419
LITIGATION	)	Docket No. 1:13-md-2419-RWZ
_____	)	
	)	
This document relates to:	)	
	)	
Handy v. Box Hill Surgery Center, LLC, et al.	)	
No. 1:14-cv-14019-RWZ	)	

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**BOX HILL DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, the Defendants, Box Hill Surgery Center, LLC, Ritu T. Bhambhani, M.D., and Ritu T. Bhambhani, M.D., LLC (collectively, the “Defendants” or “Box Hill Defendants”), by and through counsel, respectfully moved this Court for entry of an Order granting summary judgment on several issues in their favor on September 18, 2017.<sup>1</sup>

The Box Hill Defendants were granted leave by this Court to file partial motions for summary judgment on several issues.<sup>2</sup> Thus, the Box Hill Defendants filed a Consolidated Motion for Summary Judgment as well as corresponding Memoranda of Law in Support of Their Motion for Partial Summary Judgment for each of the issues.<sup>3</sup> The instant Motion, and corresponding Consolidated Memorandum of Law in Support of the Box Hill Defendants’ Motion for Summary Judgment, is filed in response to the Court’s request that the issues be consolidated into one summary motion and memorandum prior to the hearing on the Box Hill Defendants’ Motion for

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<sup>1</sup> See Dkt. 3454; Dkt. 3455; Dkt. 3456; Dkt. 3457; Dkt. 3458; Dkt. 3459; Dkt. 3460.

<sup>2</sup> See Dkt. 3443.

<sup>3</sup> See *supra* note 1.

Summary Judgment that has been scheduled for January 25, 2018. Plaintiffs have already filed their Opposition,<sup>4</sup> and Defendants filed limited Replies,<sup>5</sup> so the issues are fully briefed.

Plaintiffs' Complaint included six claims that were specific to the Box Hill Defendants.<sup>6</sup> These claims included: Count I (Medical Malpractice – Negligence); Count II (Informed Consent); Count III (Battery); Count XI (Civil Conspiracy and Concerted Activity); Count XII (Violation of Massachusetts and Maryland State Consumer Protection Statutes); and Count XIII (Wrongful Death and Consortium Loss). The other Counts in the Complaint involved claims against NECC-related parties and National Defendants, but they were dismissed after settlement by those parties.

On April 2, 2015, Plaintiffs stipulated to the dismissal of Count III (Battery) and Count XI (Civil Conspiracy and Concerted Activity).<sup>7</sup> That stipulation was given effect by Order of the Court on April 17, 2015.<sup>8</sup> On September 8, 2015, the Court partially granted the Box Hill Defendants' Motion to Dismiss with regard to the Maryland Consumer Fraud claim contained in Count XII of Plaintiffs' Complaint.<sup>9</sup>

Accordingly, only Count I (Medical Malpractice – Negligence), Count II (Informed Consent), Count XII (Violation of Massachusetts State Consumer Protection Statutes), and Count XIII (Wrongful Death and Consortium Loss) remain. Plaintiffs' requests for punitive damages in relation to these claims also remain. For the reasons explained in the Consolidated Memorandum of Law in Support of the Box Hill Defendants' Motion for Summary Judgment accompanying this Motion, the Box Hill Defendants contend that there is no genuine disputed issue as to any material

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<sup>4</sup> See Dkt. 3485.

<sup>5</sup> See Dkts. 3489 (Punitive Damages), 3490 (Massachusetts Consumer Protection).

<sup>6</sup> See Handy Complaint, attached as **Exhibit 1**.

<sup>7</sup> See Dkt. 1761.

<sup>8</sup> See Dkt. 1780.

<sup>9</sup> See Dkt. 2225.

fact and that the Box Hill Defendants are entitled to judgment as a matter of law on the issues and claims addressed therein.

WHEREFORE, the Box Hill Defendants respectfully request that this Court grant summary judgment in their favor as to each claim addressed therein.

Respectfully submitted,

/s/ Catherine W. Steiner  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that on this 4<sup>th</sup> day of January, 2018, a copy of the foregoing Box Hill Defendants' Motion for Summary Judgment was electronically filed in the United States District Court for the District of Massachusetts and electronically served upon counsel of record through the Court's CM/ECF system.

/s/ Catherine W. Steiner  
Catherine W. Steiner, Esq.